

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

BOOTS OF OKLAHOMA, LLC.,
an Oklahoma corporation,

Plaintiff,

v.

ESSEX INSURANCE COMPANY,

Defendant(s).

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

OCT 31 2013

TIM RHODES
COURT CLERK

37

01-2013-6002

PETITION

COMES NOW the Plaintiff, Boots of Oklahoma, LLC ("Boots"), and for its Petition against the Defendant(s), Essex Insurance Company, alleges and states:

1. Plaintiff is an Oklahoma limited liability company doing business in Oklahoma County, State of Oklahoma.
2. Defendant, Essex Insurance Company, is a foreign corporation providing insurance coverage to Oklahoma insured including, inter alia, Boots.
3. The facts which give rise to this Petition occurred in Oklahoma County, State of Oklahoma.
4. This Court has jurisdiction of the parties and the subject matter herein.

FACTUAL ALLEGATIONS

Boots incorporates by reference as if fully set forth herein the allegations contained in paragraphs one (1) through four (4) of this Petition and further alleges and states:

5. Defendant issued a Commercial Insurance Policy to Boots with an effective policy period of October 30, 2012, to October 30, 2013.
6. The Commercial Insurance Policy issued by Defendant, Essex Insurance

Company, to Boots concerned, inter alia, commercial real property located at 2747 West Memorial Road, Oklahoma City, Oklahoma County, State of Oklahoma (hereinafter the "Premises") owned by Boots and leased to a commercial tenant.

7. On or about the 16th day of March, 2013, the Premises suffered substantial loss by reason of a fire.

8. Defendant, Essex Insurance Company, was promptly and timely notified of the loss of the Premises and acknowledged the claim submitted by Boots assigning it claim number PO32878.

9. The damage to the Premises exceeds Seven Hundred Thousand Dollars (\$700,000.00) which information was promptly and timely provided to Defendant, Essex Insurance Company.

10. As a result of the damage to the Premises the tenant to whom it was leased was no longer able to occupy the Premises or operate the commercial enterprise from the Premises which deprived Boots of rental income.

11. Defendant, Essex Insurance Company, was given ample opportunity to examine the damage to the Premises.

12. Defendant, Essex Insurance Company, was provided with detailed estimates of the damage to the Premises and the cost of repair of that damage which information was neither challenged nor disputed by Defendant, Essex Insurance Company.

13. Boots repeatedly requested payment under and consistent with the terms of the Commercial Insurance Policy issued by Defendant, Essex Insurance Company, to allow repair of the Premises.

14. Other than an initial advance of One Hundred Thousand Dollars (\$100,000.00), Defendant, Essex Insurance Company, has wholly failed and refused to pay Boots pursuant to the terms of the Commercial Insurance Policy issued by Defendant, Essex Insurance Company, for which it collected premiums.

15. As a result of the refusal of Defendant, Essex Insurance Company, to promptly and timely pay the proceeds due under the Commercial Insurance Policy it issued Boots has been required to obtain funds from third parties including loans to begin the repair of the Premises.

16. Under the guise of honoring the Commercial Insurance Policy issued to Boots, Defendant, Essex Insurance Company, requested that Boots execute a second Sworn Statement Proof of Loss prepared for and at the direction of Defendant, Essex Insurance Company.

17. However, the Sworn Statement Proof of Loss prepared for and at the direction of Defendant, Essex Insurance Company, was for an amount substantially less than the actual loss incurred by Boots covered under the Commercial Insurance Policy.

***FIRST CAUSE OF ACTION
(Damages for Breaches of Insurance Policy)***

Boots incorporates by reference as if fully set forth herein the allegations contained in paragraphs one (1) through seventeen (17) of this and further alleges and states:

19. The failure to pay all sums when due under the Commercial Insurance Policy constitutes a breach of the Commercial Insurance Policy.

20. Defendant, Essex Insurance Company, is liable to Boots under the Commercial Insurance Policy for an amount in excess of Ten Thousand Dollars

(\$10,000.00).

WHEREFORE, upon its First Cause of Action, Boots respectfully requests that this Court render judgment against Defendant, Essex Insurance Company, in an amount in excess of Ten Thousand Dollars (\$10,000.00); interest as provided by law until paid; and costs incurred in prosecuting this action, including a reasonable attorney fee, and for such further relief as the Court deems just and equitable.

SECOND CAUSE OF ACTION
(Breach of the Duty to Deal Fairly and in Good Faith)

Boots, for its Second Cause of Action against Defendant, Essex Insurance Company, incorporates by reference as if fully set forth herein the allegations contained in paragraphs one (1) through twenty (20) of this Petition and further alleges and states:

21. Defendant, Essex Insurance Company, owes Boots a duty to deal fairly and in good faith when a claim has been submitted under the Commercial Insurance Policy.

22. Defendant, Essex Insurance Company, has breached its duty to deal fairly and in good faith with Boots in numerous respects, including but not limited to

Failing to timely investigate the claim submitted by Boots;

Failing to properly investigate the claim submitted by Boots;

Failing to timely pay all sums due and owing under the Commercial Insurance Policy issued to Boots;

Failing to timely respond to inquiries of Boots regarding its claim under the Commercial Insurance Policy issued by Defendant, Essex Insurance Company;

Delaying processing the claim of Boots under the Commercial Insurance Policy issued by the Defendant, Essex Insurance Company;

Presenting an improper Sworn Statement and Proof of Loss for execution by Boots

...Withholding access to the Premises for several months;

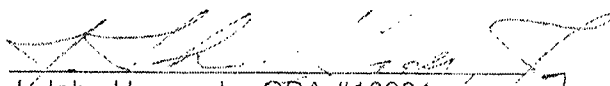
Forcing Boots to initiate this litigation to recover under the Commercial Insurance Policy issued by Defendant, Essex Insurance Company.

23. As a result of the breach of the duty to deal fairly and in good faith by Defendant, Essex Insurance Company, Boots has been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

24. The actions of Defendant, Essex Insurance Company, in breaching its duty to deal fairly and in good faith with Boots were deliberate, intentional, willful, malicious, and in reckless disregard of the rights of Boots so that punitive damages are appropriate in this action.

WHEREFORE, upon its Second Cause of Action, Boots respectfully requests this Court render judgment against Defendant, Essex Insurance Company, in an amount in excess of Ten Thousand Dollars (\$10,000.00); interest as provided by law until paid; and costs incurred in prosecuting this action, including a reasonable attorney fee; punitive damages; and for such further relief as the Court deems just and equitable.

THE LAW OFFICE OF J. JOHN HAGER, P.C.



J. John Hager, Jr., OBA #10831
The Law Office of J. John Hager, P.C.
3233 East Memorial Road, Suite 101
Edmond, Oklahoma 73013
Telephone: (405) 607-2267
Facsimile: (405) 478-9457
Email: john.hager@coxinet.net

ATTORNEY'S LIEN CLAIMED

Attorney for Plaintiff, Boots of Oklahoma, LLC